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14 LIFE TECHNOLOGIES CORP.

11 UNITED STATES DISTRICT COURT  
12 SOUTHERN DISTRICT OF CALIFORNIA

13 TROLL BUSTERS, LLC,

14 Plaintiff,

15 v.

16 ROCHE DIAGNOSTICS GMBH, ROCHE  
17 MOLECULAR SYSTEMS (RMS), ROCHE  
18 DIAGNOSTICS CORP. D/B/A ROCHE  
19 APPLIED SCIENCES, EUROGENTEC  
20 NORTH AMERICA INC., CLONTECH  
21 LABORATORIES INC., INTEGRATED  
22 DNA TECHNOLOGIES (IDT), LIFE  
23 TECHNOLOGIES CORP., QIAGEN NV.,  
24 THERMO FISHER SCIENTIFIC, INC.,  
25 QUANTA BIOSCIENCES, INC., GENE  
26 LINK INC., GENSCRIPT USA INC., EMD  
27 CHEMICALS INC., TRILINK  
28 BIOTECHNOLOGIES INC., and  
CEPHIED,

Defendants.

Case No. 11-cv-0056 IEG (WVG)

**LIFE TECHNOLOGIES CORP.'S  
NOTICE OF JOINDER AND JOINDER  
IN DEFENDANTS ROCHE  
MOLECULAR SYSTEMS AND  
ROCHE DIAGNOSTICS CORP.'S  
MOTION TO DISMISS (DKT. NO. 91)**

Date: June 13, 2011  
Time: 10:30 a.m.  
Courtroom: 1, Fourth Floor  
Judge: Hon. Irma E. Gonzalez

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that defendant Life Technologies Corp. ("Life Tech") hereby joins in co-defendants Roche Molecular Systems and Roche Diagnostics Corp.'s

1 (collectively “Roche’s”) Motion to Dismiss (Dkt. No. 91), for all of the reasons set forth  
2 therein. Life Tech reserves the right to participate in any further briefing and oral argument.

3 Each of the arguments presented in Roche’s Motion to Dismiss also applies to Troll  
4 Busters’ allegations against Life Tech. Troll Busters’ allegations against Life Tech fail to  
5 meet the required pleadings standards of Fed. R. Civ. P. 9(b) for the same reasons that Troll  
6 Busters’ allegations against Roche fail, as outlined in Roche’s Motions to Dismiss. First,  
7 Troll Busters has failed to plead facts that permit an inference that Life Tech acted with the  
8 intent to deceive the public. Instead, Troll Busters offers nothing more than the conclusory  
9 allegation that Life Tech “intended to deceive the public by marking the products or forcing  
10 its licensees to mark its licensed products with one or more of the Expired Patents and/or  
11 using said expired Patents in advertising materials available to the general public.” (Dkt. No.  
12 84, ¶ 135). Such conclusory allegations are insufficient. Further, Troll Busters pleads facts  
13 showing that Life Tech did *not* intent to deceive the public by pleading that Life Tech  
14 “attempted to disable some links within its website, but the falsely marked expired patents  
15 still appear.” (Dkt. No. 84, ¶ 83). Allegations that Life Tech attempted to remove accused  
16 materials contradict Troll Busters’ vague assertions that “Defendants’ intent is further  
17 demonstrated by their post-suit conduct.” (Dkt. No. 84, ¶¶ 104, 134). As set forth in Roche’s  
18 Motion to Dismiss, such bald, conclusory allegations regarding intent cannot survive a motion  
19 to dismiss as a matter of law.

20 Similarly, Troll Busters’ First Amended Complaint fails to allege a factual basis to  
21 support the conclusory allegation that Life Tech actually knew the patents at issue had  
22 expired. (*See* Dkt. No. 84, ¶¶ 110, 134). Troll Busters’ allegation that the defendants are  
23 large, sophisticated companies who have experience with the patent system was recently  
24 addressed by the Federal Circuit and held to be insufficient to survive a motion to dismiss. *In*  
25 *re BP Lubricants USA Inc.*, 2011 WL 873147, 1-2 (Fed. Cir. Mar. 15, 2011); (*See* Dkt. No.  
26 84, ¶¶ 97-100). Further, not only are Troll Busters’ allegations that “[a]rticles and discussions  
27 in industry publications described the expiration of at least the ’202 Patent, ’195 Patent and  
28 ’188 Patent” unacceptably vague, they also have no applicability to Life Tech as Troll Busters

1 has not alleged that Life Tech falsely marked with these patent numbers. (*Compare* Dkt. No.  
2 84, ¶ 105 *with* Dkt. No. 84, ¶¶ 81-82). And, as explained in Roche’s Motion to Dismiss,  
3 allegations that Life Tech, as a licensor, must have known of the expiration of the patents is  
4 no more than speculation. (*Compare* Dkt. No. 84, ¶ 101, 102 *with* Dkt. No. 91-1 at 8).

5 Second, Troll Busters has failed to sufficiently plead that Life Tech engaged in any  
6 conduct prohibited by the false marking statute. As Roche’s Motion to Dismiss lays out, the  
7 False Marking Statute only prohibits “mark[ing a patent number] upon, or affix[ing a patent  
8 number] to, or “us[ing a patent number] in advertising” an unpatented article. (Dkt. No. 91-1  
9 at 9-11 (citing 35 U.S.C. § 292(a))). Troll Busters does not sufficiently allege that Life Tech  
10 marked, affixed, or advertised a patent number on an unpatented article. There are simply no  
11 specific factual allegations in the First Amended Complaint that the patents at issue were  
12 marked upon or affixed to Life Tech’s products or their packaging. Troll Busters fails to  
13 identify the language it considers to be a false marking, when and where the language was  
14 used and who made the decision to use it. (*See* Dkt. No. 94, ¶¶ 81-82, 133). The generalized  
15 allegation that patent numbers were used with Life Tech’s products is not sufficient to survive  
16 a motion to dismiss because only certain uses of patent numbers are prohibited under the  
17 False Marking Statute. (*See* Dkt. No. 91-1 at 8-9.) Nor does Troll Busters identify any  
18 alleged wrongful advertisements, when or where any alleged improper language was used, or  
19 how Life Tech used the patents in a manner importing or suggesting that the products were  
20 covered by such patents. (*See* Dkt. No. 84, ¶¶ 45, 70, 81-83, 103, 133, 134).

21 Life Tech also joins in Roche’s arguments that the False Marking Statute is  
22 unconstitutional. As explained in Roche’s Motion to Dismiss, the False Marking Statute fails  
23 to provide sufficient control to the Executive Brand and because it undermines the principle  
24 of separation of powers. (*See* Dkt. No. 91-1 at 14-22.)

25 This joinder is based on this Notice of Joinder and Joinder, Roche Molecular Systems  
26 and Roche Diagnostics Corp.’s Notice of Motion and Motion to Dismiss, their Supporting  
27 Memorandum and Points and Authorities, the accompanying declaration and exhibits thereto,  
28 their Notice of Challenge to Constitutionality of a Statute Pursuant to FRCP 5.1, the

1 pleadings, records, and files in this action, and such other arguments and evidence as may be  
2 presented prior to and at the hearing on this motion.

3  
4 Dated: May 9, 2011

/s/ Matthew D. Murphey  
Matthew D. Murphey, Esq.  
TROUTMAN SANDERS LLP  
Attorneys for Defendant  
LIFE TECHNOLOGIES CORP.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on May 9, 2011 to all counsel of record who are deemed to have consented to electronic service for the Court's CM/ECF system per Civil Local Rule 5.4. Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery.

Dated: May 9, 2011

/s/ Matthew D. Murphey